



March 8, 2022

To the Honorable Council
City of Norfolk, Virginia

Item Number: R-6

Re: Amend Code to Create a Citizen Review Board

Dear Ladies and Gentlemen:

Enclosed please find an ordinance Amending Article IV of Chapter 2 of the Norfolk City Code, 1979, so as to add Sections 2-565 through 2-565.7 regarding the creation of a Citizen Review Board.

Respectfully,

A handwritten signature in black ink, appearing to read "BAPishko", is written over a horizontal line.

Bernard A. Pishko
City Attorney

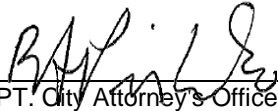
BAP:bjl
Attachment

Form and Correctness Approved:

Contents Approved:

Heather Mullen

By: _____
Office of the City Attorney

By:  _____
DEPT. City Attorney's Office

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER
2 OF THE NORFOLK CITY CODE SO AS TO CREATE A
CITIZEN REVIEW BOARD.

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WHEREAS, in its efforts to provide greater
transparency and resident input in the modern policing
environment, the Council of the City of Norfolk has determined
to create an independent Citizen Review Board; and

WHEREAS, the Citizen Review Board's primary task will
be to review individual internal investigation case files and
provide input to the City Manager and Chief of Police on
recommended actions; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Article IV of Chapter 2 of the
Norfolk City Code, 1979, as amended, is hereby amended
so as to add Sections 2-565 through 2-565.7 to read as
follows:

Sec. 2-565

Citizen Review Board.

The board advises the chief of police
with respect to the adequacy of internal
administrative investigations of citizen
complaints of certain allegations of police
misconduct, more specifically, complaints of
excessive force, bias-based policing, civil
rights violations, and/or abuse of authority,

and with respect to the adequacy of any recommended actions, including corrective action and disciplinary determinations, taken as a result of such investigations. At times, the board may be asked to provide recommendations regarding police administrative and/or operational policies and practices, recruitment and hiring policies and practices, and police training.

Sec. 2-565.1 Definitions.

Active board and *active members* mean the seven (7) active members initially selected at board creation and subsequently selected to serve on the board in an active capacity (as opposed to being selected to serve as alternate members) and includes those members who began service as alternate members but who were moved to active service to fill a vacancy on the active board.

Alternate members means the seven (7) alternate members initially selected at board creation and those members subsequently selected to serve as alternates on the board (as opposed to being selected to serve as an active member or moved into service as an active member).

Board means the Citizen Review Board.

Law-enforcement officer or *sworn police officer* means any person, other than the chief of police, who is a non-probationary officer of the Norfolk Police Department and who is authorized by law to make arrests.

**Sec. 2-565.2 Composition; appointment
of members.**

The board shall consist of seven (7) active members and seven (7) alternate members all of whom shall be qualified voters residing in the city. The membership shall be selected to reflect the demographic diversity of the city. The active board members and alternate members shall be appointed by city council following an application process using the city's current application process for boards,

commissions, and committees, but with the inclusion of background checks and a council interview process. The following qualifications shall be considered:

- (1) Each of the seven (7) active member positions will be filled by a resident of the City of Norfolk from each of the seven (7) separate wards and Superwards in the city. Each of the seven (7) alternate member positions will be filled by a resident of Norfolk from each of the seven (7) separate Wards and Superwards in the city.
- (2) Should the Ward or Superward residency of an active member or alternate member change during the term of service, council may determine to remove the member from service on the board.
- (3) Alternate members will move to the active board if the active board member from their respective Ward or Superward resigns, is removed from the active board, or is otherwise no longer eligible to or able to serve on the active board. A new alternate member from the respective Ward or Superward will then be selected.
- (4) Active members and alternate members must be at least 21 years old.
- (5) Active members and alternate members may not have served on, been selected to serve on, or been appointed to another City of Norfolk board, committee, commission, group, entity, or panel within the past six years from the date of application to the board and may not serve concurrently on any such City of Norfolk board, committee, commission, group, entity, or panel. Active members and alternate members may not have served on, been selected to serve on, or been appointed to a similar review or advisory board, committee, commission, group, entity, or panel charged with reviewing law

enforcement conduct and/or policies, practices, and procedures for another local, state, or federal government or governmental agency within the past six years from the date of application to the board and may not serve concurrently on any such board, committee, commission, group, entity, or panel.

(6) Active members and alternate members may not be an active or former elected or appointed officer or official of the City of Norfolk, an active or former City of Norfolk employee, and active or former employee of a Constitutional Officer of the City of Norfolk, an active or former law enforcement officer from any federal, state, or local government or agency, an active or former correctional officer from any federal, state, or local government or agency, an active or former judge, an active or former employee of a federal, state, or local prosecuting attorney's office, or an immediate family member of any of the former.

(7) Active members and alternate members may not have been convicted within the prior ten (10) years for a crime punishable by death or imprisonment for more than one year or a crime that involved proof or admission of a dishonest act or false statement. Active members and alternate members may not have received a dishonorable discharge from the military within the prior ten (10) years.

**Sec. 2-565.3 Term of members;
 resignation; removal;
 filling of vacancies.**

(a) Of the active members and alternate members of the board initially appointed by the council, three (3) (from Wards 2 and 3 and Superward 6) shall be appointed for a term of two (2) years, and four (4) (from Wards 1, 4 and 5 and Superward 7) shall be appointed for

a term of three (3) years. Alternate members shall be appointed in the same manner. Subsequent appointments shall be for a term of three (3) years each, except that movement of an alternate to the active board and any appointments to fill alternate vacancies shall be for the unexpired terms. No person shall serve on the active board for more than one (1) term. Alternate members may reapply to serve as board members after a three (3) year break from service.

(b) Active and alternate members may resign from the board at any time by delivering a written notice of resignation to council. Active and alternate members may be removed from the board by council if they are no longer eligible to serve pursuant to the qualifications set forth in section 2-565.2, if they fail to participate in and/or complete the training set forth in section 2-565.4, if they breach the confidentiality requirements set forth in section 2-565.6, if they are otherwise determined to be ineligible or unable to serve, or in accordance with City Charter Section 142. Active members may also be removed by council if they are absent from three (3) consecutive board meetings or absent from five (5) board meetings in a calendar year, absent good cause.

(c) Vacancies on the active board shall be filled by the alternate member from the respective Ward or Superward. Vacancies of alternate members will be filled with consideration of the qualifications set forth in section 2-565.2.

**Sec. 2-565.4 Chairperson; meetings;
 records; rules of
 procedure; training.**

(a) The active board shall annually elect a chairperson and vice chairperson from its membership who shall serve at the pleasure of the membership. The active board shall hold regular meetings monthly, or more frequently at the call of the chairperson or at the request of the chief of police or city

manager. The vice chairperson shall serve as chair in the absence of the chairperson.

(b) A majority of the active members shall constitute a quorum for the transaction of business. The board may take action by motion or resolution upon an affirmative majority vote provided a quorum of at least five (5) out of seven (7) active members are present. No separate or dissenting opinions shall be issued.

(c) Policies and procedures for the board will be approved and established by council following preparation by the city manager with the assistance of the city attorney's office. Board policies and procedures will be subject to review by the council on an annual basis or when requested by the board.

(d) Board members, including alternate members, shall participate in training regarding relevant city, state, and federal policies, practices, and procedures for police work.

(e) After appointment of the initial board, and prior to members of the initial active board convening to exercise any powers or engage in any duties as set forth in section 2-565.5, or exercising any powers or engaging in any duties as set forth in section 2-565.5, the initial active members and initial alternate members shall participate in the following training, and thereafter, at least once every year, and within six months of appointment to the Board, Board members shall participate in the following training:

- (1) at least eight hours of training, presented by a professional organization with experience in training regarding oversight of law enforcement.
- (2) Training by city staff or otherwise provided by the city addressing the following matters:

- (i) legal and ethical obligations of members of a public board;
- (ii) Norfolk Police Department policies and training, including but not limited to defensive tactical training, Crisis Intervention Training, and de-escalation training;
- (iii) relevant privacy rules and city policies and procedures involving liability, employee discipline, and other matters related to police operations;
- (iv) Norfolk Police Department and city administrative systems, processes, structures and operations; and
- (v) laws, policies, and procedures with respect to civil rights, arrests, search, and seizure, constitutional and civil rights of citizens, constitutional and civil rights of sworn police officers, credibility determinations with respect to sworn police officers, due process and procedural rights of sworn police officers, and investigations of and disciplinary action regarding sworn police officers.

(3) at least three (3) ride-along sessions with Norfolk Police Department patrol operations per calendar year.

Sec. 2-565.5 Powers and duties.

(a) The board shall serve in an advisory capacity to the police chief and city manager with respect to internal administrative investigations and recommended discipline, corrective action, and/or other action with respect to citizen complaints about the conduct of sworn police officers, when such complaints involve complaints of excessive

force, bias-based policing, civil rights violations, and/or abuse of authority.

(b) Specifically, the board is empowered to do the following:

(1) Review designated internal administrative investigations and recommendations, including, but not limited to any recommended discipline, corrective action, and/or other action, involving citizen complaints with respect to police officers' conduct which involves complaints of excessive force, biased-based policing, civil rights violations and/or abuse of authority.

(i) In most circumstances, the board's review will take place following completion of the internal administrative investigation and issuance of recommendations by the applicable commanding officer and prior to the issuance of any discipline or corrective action by the chief of police with the approval of the director of public safety.

(ii) In circumstances involving criminal investigations with respect to police officers' conduct, the board will not review or comment until the criminal investigation is completed, the commonwealth attorney's office has made a decision with respect to any potential charges, the internal investigation has been completed, and any criminal, civil, and/or federal, state, or local administrative proceedings related to the conduct are completed.

(iii) Where the chief of police necessarily takes action to immediately suspend without pay a

law enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the Norfolk Police Department or the public and/or who refuses to obey a direct order issued in conformance with the Norfolk Police Department's written and disseminated policies, procedures, general orders, special orders, and/or other directives, the board's review will take place following imposition of discipline.

- (2) Concur or not concur with the recommendations of the commanding officer, or with the decision of the chief of police in situations involving immediate suspension, and provide its recommendation to the chief of police and city manager.
- (3) Provide and advise the chief of police and city manager of the reasons for any non-concurrence by the board with respect to the recommendation of the commanding officer or the decision of the chief of police in situations involving immediate suspension, including, but not limited to, requests for clarification, for additional investigation, and/or recommendations regarding disciplinary action.
- (4) Receive and consider the response of the chief of police with respect to the basis for any of his or her decisions that are not in concurrence with the board's position.
- (5) Receive citizen complaints regarding police conduct, forward such complaints to the Norfolk Police Department for internal administrative investigation, and, if appropriate, review the internal administrative

investigation and recommendations, as set forth herein.

- (6) Upon request from council, the city manager, and/or the chief of police, or on the board's initiative, make recommendations with respect to police administrative and/or operational policies and practices, recruitment and hiring policies and practices, and officer training.
- (7) Submit an annual report to the council.
- (8) Submit to the council, from time to time, other reports that are requested by the council, by the chief of police, or by the director of public safety, and/or by the city manager.
- (9) Submit to the council, from time to time, other reports that the board deems appropriate.

(c) The chief of police will consider the position and advice of the board in making decisions regarding discipline, corrective action, and/or other action, and in reviewing immediate action previously taken as set forth in section 2-565.5(b)(1)(iii).

(d) The board's position and advice to the chief of police with respect to a complaint it has reviewed will not replace the final and exclusive authority with respect to disciplinary actions provided to the chief of police, with the approval of the director of public safety, per City Charter Section 63.

(e) The board's position and advice to the chief of police with respect to a complaint it has reviewed will not replace the rights and protections which may be available to a police officer pursuant to the Law-Enforcement Officers' Procedural Guarantee Act, Virginia Code section 9.1-500, et. seq., City Charter Section 63, and the City's Grievance Procedure.

(f) The board's authority to review internal administrative investigations, recommendations, and decisions, shall be limited to the specific types of complaints identified in section 2-565.5(b)(1).

(g) The board will not have authority to review the following matters:

- (1) Internal administrative investigations, recommendations, and decisions with respect to other types of citizen, employee, or internal complaints not set forth in section 2-565.5(a), including but not limited to routine administrative matters and internal complaints from employees related to the terms and conditions of employment;
- (2) Complaints involving any incident that occurred more than two years before the filing of the complaint with Norfolk Police Department or the board;
- (3) Any financial management or procurement decisions made by Norfolk Police Department;
- (4) Any individual hiring, assignment, transfer, and promotional decisions made by the Norfolk Police Department;
- (5) Any complaint asserted by a city employee that is subject to any process or proceeding under City Charter Section 63 or the City's Grievance Procedure;
- (6) Any complaint concerning matters that are subject of a pending criminal proceeding in any trial court, a pending civil proceeding, an anticipated civil proceeding as evidenced by a notice of claim, or a federal, state, or local administrative proceeding;
- (7) Any other claim otherwise outside the scope of the board's authority as

determined by this Section or applicable State Law.

**Sec 2-565.6 Conflicts of interest;
Confidentiality**

(a) The board and each member shall comply with the Virginia State and Local Government Conflict of Interests Act under Virginia Code §§ 2.2-3100 et seq.

(b) Except as included in the board reports referenced in section 2-565.5 and to the extent allowed under the Virginia Freedom of Information Act, each member shall maintain the confidentiality of all confidential or privileged information, including but not limited to:

- (1) disciplinary actions, memos and reports that the member receives during service on the board;
- (2) statements of a police officer, or Norfolk Police Department employee, who was required by Norfolk Police Department to give a statement;
- (3) criminal investigative files;
- (4) information protected by law;
- (5) personally identifiable information;
- (6) information that may reveal the identity of a confidential source or informant;
- (7) information related to juvenile records or which may reveal the identity of a juvenile;
- (8) information, including about techniques, procedures, or guidelines used in criminal investigations or prosecutions, that could endanger the life or physical safety of any individual, enable subsequent criminal actions, and/or enable the avoidance of subsequent criminal charges; and/or

(9) information eligible for exemption from mandatory disclosure requirements under the Virginia Freedom of Information Act.

(c) All records containing confidential or privileged information shall be made available for review by active board members in a manner designed to maintain the confidentiality of the information. All verbal statements containing confidential or privileged information and all discussions regarding confidential or privileged information may be presented and discussed only in a properly convened closed session of the board in order to maintain the confidentiality of the information.

(d) Board members shall attest in writing to their obligation to maintain the confidentiality of the confidential or privileged information made available or provided to them due to their service on the board.

(e) All original records provided to the board by Norfolk Police Department shall remain official Norfolk Police Department records.

Sec. 2-565.7 Funding.

Appropriate funding to support the necessary staff for the Board, including, administrative support staff, technical experts, and legal counsel will be provided.

Section 2:- That this ordinance shall be in effect from and after the date of its adoption.